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EXTRAORDINARY

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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th April 2005

No.4194—li/1 (S)-70/98/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 24th March 2005 in I.D. Case No. 32/1999 of the Presiding Officer, Labour Court, Sambalpur to whom the Industrial Disputes between the Management of M/s I.D.L. Industries Ltd., Rourkela and its workman represented through the General Secretary, Indian Detonators Mazdoor Sabha, Rourkela was referred for adjudication is hereby published as in the scheduled below:

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 32 OF 1999

Dated the 24th March 2005

Present:

Shri G. N. Patra, L.L.B.,
Presiding Officer,
Labour Court, Sambalpur.

Between:

The Management of
M/s. I.D.L. Industries Ltd.,
At/P.O. Sonaparbat, Rourkela-16

.. First-party—Management

AND

Their Workman Shri S. K. Parida,
Represented through the General Secretary
Indian Detonators Mazdoor Sabha,
Sonaparbat, Rourkela-16,
Dist. Sundargarh.

.. Second-party—Workman

Appearances :

Shri G. Pujari, Advocate

.. For the First-party—Management

Shri M. D. Dash, Advocate

.. For the Second-party—Workman

AWARD

1. This is a reference made by the Government of Orissa, Labour & Employment Department, under sections 10 & 12 of the Industrial Disputes Act, 1947 vide Memo. No. 7737(5), Dt. 9-6-1999 for adjudication as to " whether the discharge from services of Shri S. K. Parida, Workman (Emp. No. 3528) of Production Department by the Management of I.D.L. Industries Ltd., Sonaparbat, Rourkela-16 with effect from 10-1-1998 is legal and/or justified ? If not, what relief the workman is entitled to ?"

2. The case of the 2nd party workman in brief is as follows:—

The 2nd party workman was working as an operator with effect from 12-8-1976 under the Management of M/s I.D.L. Industries Ltd., Rourkela (hereinafter called as 1st party Management), an Industry engaged in the production and sale of explosive for commercial purposes. He was an active member of the Trade Union and for that he used to take up the cases of the workman very often with the Management. He was promoted to the post of Operator-cum-Supervisor for his sincere and efficient services rendered without any stigma or stricture and while continuing as such, he was discharged from service with effect from 10-1-1998 for committing misconduct. On 17-12-1996 around 6.25 while he was on 'B' shift duty went to the nearby Jungle to attend to the call of nature informing his subordinates. Taking advantage of the situation, the 1st party Management in connivance with their security people levelled false allegation of theft of company's (Management's) properties and leaving work place without permission, against him. Accordingly he was charge-sheeted on 2-1-1997 and he submitted his explanation to the charge on 25-1-1997. The Management being not satisfied with the explanation of the 2nd party workman, initiated departmental proceeding appointing their own retainer/ Advocate as the Enquiry Officer to enquire into the charges. The Enquiry Officer conducted the enquiry illegally as per the desire of the 1st Party Management in violation of the principles of natural justice and submitted the enquiry report holding him guilty of the charges. The 1st Party Management agreed with the finding of the Enquiry Officer and without applying his mind and considering his reply Dt. 27-11-1997 mechanically and arbitrarily discharged him from service with effect from 10-1-1998 for committing the alleged misconduct. According to the 2nd Party Workman, the punishment imposed on him by the 1st Party Management is not only illegal, unfair and discriminatory but shockingly disproportionate to the charges levelled against him. The 1st Party Management also lodged F.I.R. on the self same charges for which the Police arrested him but the case was resulted in clean acquittal. The 2nd Party Workman has therefore prayed to reinstate him in service with full back wages and all consequential benefit.

3. The 1st Party Management contested the reference and filed written statement *inter alia* denying the allegations of the 2nd Party Workman in his statement of claim. The case of the 1st Party Management in brief is that the 2nd Party Workman at the time of termination of service was working as Supervisor-cum-Senior Operator. He belongs to the Supervisory Cadre and capacity and therefore he was not a "workman" within the meaning of Section 2(S) of the I.D. Act, 1947 and as such the reference made to this Court is beyond jurisdiction and not maintainable.

Further according to the 1st Party Management on 27-12-1996 the 2nd Party Workman Shri Parida was in 'B' shift duty from 2 P.M. with 8 hours duration in the process plant No. I at the ground floor. He left the work spot without any authority or even information. He was caught physically by the Security Guards while he was stealthily going towards Jungle side covering his body with a dhaddar and while tried to escape, polythene bags containing a number of tubes of Super dyne, Cartridge of Plant No. I were dropped down from under the cover of his dhaddar. Accordingly F.I.R. was, therefore lodged against the 2nd Party Workman at the I.D.L. outpost pursuant to which Shri Parida was arrested by Police.

On the above allegations, the 2nd Party Workman Shri Parida was placed under suspension on 28-12-1996, pending initiation of Departmental proceedings. On 2-1-1997 the 2nd Party Workman Shri Parida was served with charge sheet for committing theft of "superdyne" 25 cartridges of the 1st Party Management. The explanation Dt 25-1-1997 submitted by the 2nd Party Workman was found unsatisfactory and therefore enquiry into the matter was ordered and Shri P. Satapathy a Practicing Advocate was appointed as Security Officer with due intimation of the 2nd Party Workman. The Enquiry Officer after closure of enquiry found the 2nd Party Workman guilty of charges and accordingly submitted his enquiry report which was accepted by the disciplinary authority. Shri Parida was given a further show cause notice Dt. 1-1-1997 along with copy of the enquiry report proposing against him, the punishment of dismissal from service. The 2nd Party Workman Shri Parida submitted his reply on 27-11-1997 after which the management considering the gravity of the misconduct and position held by the 2nd Party Workman

dismissed the 2nd Party Workman from service with effect from 10-1-1998. The 2nd Party Workman Shri Parida made an appeal which was also rejected. According to the 1st Party Management, considering the gravity and seriousness of the misconduct committed by the 2nd Party Workman and positions held by him, the punishment of dismissal imposed upon him is quite just, reasonable and proportionate and prays to uphold the same.

ISSUES

4. On the pleadings of both the parties, the following issues have been framed for adjudication;

- (i) Whether the 2nd party is a workman as defined under the I.D. Act ?
- (ii) Whether the domestic enquiry conducted by the management was fair and proper ?
- (iii) Whether the discharge from service of Shri S. K. Parida, workman (Emp. No. 3528) of Production Department by the Management of I.D.L Industries Limited, Sonaparbat, Rourkela-16 with effect from 10-1-1998 is legal and justified.?
- (iv) To what relief, the workman is entitled ?"

After the issues were being framed, issue No (i) was heard first and decided by this Court vide order Dt. 1-5-2001 and thereafter issue No. (ii) was heard. In course of hearing of issue No (ii) the 2nd Party Workman examined himself as W.W.1 and proved the documents marked as Ext. A and B. The 1st Party Management relied on the documents marked Ext. 1 to 9. After conclusion of the hearing, this issue was decided by this Court vide order dated 2-6-2003.

FINDINGS

5. *Issue No. (i)*—The hearing on issues No. i as to whether the 2nd party Shri Parida is a workman was taken up first after framing of issues and this Court vide order No. 22 dated 1-5-2001 held that the 2nd party Shri Parida as a "workman" as defined under section 2(s) of the I.D. Act 1947.

6. *Issue No. (ii)*—This issue as to whether the domestic enquiry conducted by the 1st Party Management was fair and proper, after issue No. (i) was decided, was taken up and after hearing both the sides, this Court passed order on 2-6-2003 in favour of the 1st Party Management holding that the domestic enquiry conducted by the 1st Party Management was fair and proper and the same does not vitiate the proceeding in any manner.

7. *Issue Nos. (iii) & (iv)*— Both these issues are taken up together for the sake convenience and discussion . After the issue No. (ii) was decided, this Court directed both the parties to appear for hearing on issue No. (iii) & (iv) i.e. whether the discharge from service of Shri S.K. Parida, the 2nd Party Workman by the 1st Party Management with effect from 10-1-1998 is legal and/or justified ? And to what relief, the workman is entitled. Though both sides appeared for some time, later neither 2nd Party Workman nor his Counsel appeared for hearing on issue Nos. (iii) and (iv). Both the parties also did not adduce any oral or documentary evidence in support of their respective cases. Issues Nos. (iii) and (iv) are therefore to be decided basing solely on the statement of claim and written statement filed by the 2nd Party Workman and the 1st Party Management and the materials available on record. From the materials on record it appears that the 2nd Party Workman has been discharged from service on the allegation of theft of the Company's (Management's) property and absence from work spot without any authority or permission vide Ext.1. He has been held guilty of charges vide Ext. 7 in which he has fully taken part and after hearing, this Court has already held that the said domestic enquiry was fair and proper. Now under the above circumstances only question left to be decided as to whether in the given circumstances the punishment of discharge from service imposed on the 2nd Party Workman by the 1st Party Management is legal and justified. The workman in his statement of claim and rejoinder has taken a plea that the 1st Party Management had lodged a F.I.R. on the self same charges and in the related G.R. Case No. 98/1996, he has been acquitted by the learned S.D.J.M., Panposh, Rourkela. Hence, the charges made against him by the 1st Party Management is frivolous and vague. It is the settled principles of law that the object, the standard of proof, the mode of enquiry and rules governing the enquiry and trial in a disciplinary proceeding is altogether distinct and

different from that of the criminal proceeding. In the disciplinary proceeding, the question is whether the charge sheeted workman is guilty of such conduct as would merit his removal from service or a lesser punishment whereas in a criminal proceeding, the question is whether the accused has committed offences against law. That being the position, the acquittal of the 2nd Party Workman in the criminal case for these-same charges, does not *ipso facto* nullify the finding recorded in a departmental proceeding.

The next plea taken by the 2nd Party Workman is that even in the given circumstances, the punishment of discharge from service imposed on him is shockingly disproportionate to the charges levelled against him and pray this Court to interfere in the matter in exercise of its power conferred under section 11-A of the I.D. Act. From the materials on record it can be seen that the 2nd Party Workman was charge sheeted vide Ext. 1 on the allegation of theft of three packets of "Superdyne" 25MM Explosive belonging to the 1st Party Management and he was caught red-handed by the Security Personnel and in the domestic enquiry, the Enquiry Officer after going through the entire evidence on record before him found the 2nd Party Workman guilty of the said charges. It is the settled position of law that it is not the amount or things that have been stolen, but it is the act of stealing which is grave and serious. It is therefore cannot be conceived that commission of theft of "Superdyne" from the Management's Industry is not ground and the punishment imposed in the disciplinary proceeding is disproportionate and excessive. In the circumstances, I am of the opinion that the punishment of discharge from service imposed upon the 2nd Party Workman by the 1st Party Management in the given circumstances is legal and justified and proportionate to the proved misconduct. Interference with the punishment exercising power Under Section 11-A by this Court is totally unwarranted and uncalled for and any leniency in such matter will not be in the interest of justice and industrial discipline. The 2nd Party Workman is therefore not entitled to any relief as prayed for by him. Accordingly issue Nos. (iii) and (iv) are answered against the 2nd Party Workman. Hence, the following award.

AWARD

The reference is answered on contest, but in the circumstances without any cost. The discharge from service of Shri S.K. Parida, Workman (Emp. No. 3528) of Production Department by the Management of I.D.L Industries Limited, Sonaparbat, Rourkela-16 with effect from 10-1-1998 is held to be legal and justified and the Workman Shri Parida is not entitled to any relief.

Detected and Corrected by me

G. N. Patra
24-3-2005
Presiding Officer,
Labour Court,
Sambalpur.

G. N. Patra
24-3-2005
Presiding Officer,
Labour Court,
Sambalpur.

By order of the Governor

D.MISHRA
Under-Secretary to Government